



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,585	05/16/2001	Henry V. Izzo	2280.2720	1418

5514 7590 11/02/2005

FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER

JANVIER, JEAN D

ART UNIT PAPER NUMBER

3622

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/855,585

Applicant(s)

IZZO ET AL.

Examiner

Jean Janvier

Art Unit

3622

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 101.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-24.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.

Jean Janvier  
Examiner  
Art Unit: 3622

Continuation of 11. does NOT place the application in condition for allowance because: Contrary to the Applicant's contention, Lieberman discloses a method of and a system for enabling a user to enter data including a promotional product code on an entry form to thereby participate in a prize drawing game of chance. To this end, entry forms are provided, which depict and advertise the product, which the game promotes, and which include spaces for the entrant or user to write self-identifying information. The entry forms also include a laser-scannable bar code, which uniquely identifies the product being promoted. The inclusion of this bar code facilitates automated sorting of entry forms and makes practical the processing of a plurality of games, each promoting a different product, simultaneously within a single, centralized processing facility. The entry forms also include spaces in which the entrant is required to write the universal product-code number (UPC) or identification code, which uniquely identifies the product being promoted by the game. Since this number is not disclosed on the printed entry form, used by the entrant to participate, and since the most convenient source of the number is the label of the product that is being promoted, then the handwritten-UPC-number requirement (the UPC code must be entered or written down on the entry form by the user) gives consumers an incentive to seek out, view and handle the product which is the subject of the promotion.

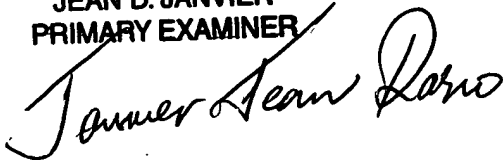
According to the present system, written entry forms may be made available to potential participants or entrants in one or more of numerous different, alternative ways, including, for example, the following: (1) As clippable coupons distributed in newspapers, mailers, flyers, or the like; (2) as tearable coupons mounted on or in a conventional poster, card dispenser, coupon dispenser (kiosk), or the like; (3) as part of an automated teller machine (ATM) receipt and so on and so forth.

See abstract; col. 3: 15 to col. 5: 10; col. 5: 49 to col. 6: 12.

Here, contrary to the Applicant's conclusion, a UPC code or identifier associated with a product uniquely identifies the product from a particular manufacturer. For example, a typical UPC code, in the form of a bar code and human readable code or number, has at least two fields A and B comprising five digits each. The first field A represents the manufacturer of a product and the second field uniquely identifies the product related to the manufacturer. This aspect is very well documented in the art. Hence, at least, Lieberman did indeed anticipate the claims.

Continuation of 13. Other: Continuing from step 7- The amended claims will be rejected as featured in the final Office Action .

JEAN D. JANVIER  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "Jean D. Janvier", written over the printed name and title.